

Summary: The Petitioner filed a motion for appointment of counsel, arguing that the appointment of counsel is necessary for his petition for habeas corpus relief pursuant to 28 U.S.C. § 2255 because he does not have legal training and does not have access to a law library or other legal assistance. The Court denied the motion, finding that there is not a constitutional or statutory right to counsel in habeas proceedings, that the interests of justice do not require the appointment of counsel, and that neither the claims nor the facts giving rise to them appear to be complex.

Case Name: USA v. Patrick Timothy McMorrow

Case Number: 1-03-cr-80

Docket Number: 116

Date Filed: 9/15/08

Nature of Suit:

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

United States of America,)	
)	
Plaintiff,)	ORDER DENYING PETITIONER'S
)	MOTION FOR APPOINTMENT
vs.)	OF COUNSEL
)	
Patrick Timothy McMorrow,)	
)	Case No. 1:03-cr-80
Defendant.)	
_____)	
)	
Patrick Timothy McMorrow,)	
)	
Petitioner,)	
)	
vs.)	Case No. 1:08-cv-04
)	
United States of America,)	
)	
Respondent.)	

Before the Court is the Defendant's letter to the Court filed on September 8, 2008, that the Court will treat as a motion for appointment of counsel. See Docket No. 114. On September 8,

2008, the defendant, Patrick Timothy McMorrow, filed a petition for habeas corpus relief pursuant to 28 U.S.C. § 2255. See Docket No. 113. McMorrow contends that the appointment of counsel is necessary because he does not have legal training and does not have access to a law library or other legal assistance.

There is neither a constitutional nor statutory right to counsel in habeas proceedings. See Morris v. Dormire, 217 F.3d 556, 558 (8th Cir. 2000); Blair v. Armontrout, 916 F.2d 1310, 1332 (8th Cir. 1990); see also Boyd v. Groose, 4 F.3d 669, 771 (8th Cir. 1993) (explaining that a habeas corpus proceeding is a civil proceeding to which the Sixth Amendment right to counsel afforded for criminal proceedings does not apply). However, the Court may appoint counsel for a habeas petitioner at any time if it finds that the “the interests of justice so require.” See 18 U.S.C. § 3006A(a)(2). If a court conducts an evidentiary hearing on the petition, the interests of justice require that the petitioner be appointed counsel. See Rule 8(c), Rules Governing Section 2255 Cases in the United States District Courts; see also Abdullah v. Norris, 18 F.3d 571, 573 (8th Cir. 1994). “If no evidentiary hearing is necessary, the appointment of counsel is discretionary.” Abdullah, 18 F.3d at 573.

When exercising its discretion, a court should determine whether, given the particular circumstances of the case, “the appointment of counsel would benefit the petitioner and the court to such an extent that ‘the interests of justice so require’ it.” Id. (citing 18 U.S.C.A. § 3006A(a)(2) and Battle v. Armontrout, 902 F.2d 701, 702 (8th Cir.1990)). Thus, a court should consider a number of relevant factors, including the factual complexity of the case and the petitioner’s ability to investigate and present his claim. See Abdullah, 18 F.3d at 573; see also Battle, 902 F.2d at 702.

The interests of justice do not require the appointment of counsel for McMorrow at this stage of the proceedings and there is no necessity for an evidentiary hearing at this time. Moreover, although McMorrow raises a myriad of claims in his petition for habeas corpus relief, neither the claims nor the facts giving rise to them appear to be complex. Consequently, McMorrow's motion for appointment of counsel (Docket No. 114) is **DENIED** without prejudice.

IT IS SO ORDERED.

Dated this 15th day of September, 2008.

/s/ Daniel L. Hovland

Daniel L. Hovland, Chief Judge
United States District Court